

REMARKS

The application has been reviewed in light of the Office Action mailed February 28, 2003. The application was originally filed with Claims 1–21. Claims 1–21 were rejected. Applicants hereby amend Claims 1, 8–10, and 15, and cancel Claims 3 and 11.

Declaration

As requested by the Examiner, Applicants enclose a new Declaration in compliance with 37 C.F.R. 1.67(a).

Claim Objections

The Examiner objected to Claims 1, 8 and 15 due to informalities. Applicants have amended Claims 1, 8, and 15 accordingly.

Rejections under 35 U.S.C. §112

Claims 1–21 were rejected under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicants respectfully traverse and submit that the application does describe the invention in sufficient detail to allow one of ordinary skill in the art to make and use the invention claimed. The Office Action asserts that the specification is not enabling because it does not set forth the specific test to be used as the “ship criteria”. The invention, however, is not limited to any particular test or set of factors for the ship criteria. One of ordinary skill in the art would understand that different factors may be relevant for different applications, and undue experimentation would not be required for one of ordinary skill to implement the claimed invention with ship criteria factors appropriate for a particular implementation.

In addition, the present application describes attributes relevant to ship criteria for one or more example embodiments. For example, lines 10-20 on page 16, lines 11-26 on page 20, and line 14 on page 26 through line 12 on page 27 specifically discuss various factors relevant to determining whether product may be shipped in various circumstances, including

one or more WIP profiles, capacity availability of a carrier, and a percentage completion of an order.

Rejections under 35 U.S.C. §102

Claims 1 – 4, 7 – 9, 14 – 16, and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,579,231 issued to Kouji Sudou et al. (hereafter “Sudou”). Applicants respectfully traverse and submit that Claims 1 – 2, 4, 7 – 9, 14 – 16 and 21, as amended, are not anticipated by Sudou.

Rejections under 35 U.S.C. §103

Claims 6, 11, and 18 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Sudou as applied to Claims 1, 8 and 15 above, and further in view of U.S. Patent 5,321,605 issued to William Chapman et al. (hereafter “Chapman”). Claims 5, 10, 12, 13, 17, 19, and 20 were rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable over Sudou as applied to Claims 1, 8, 9, 15, and 16 above, and further in view of U.S. Patent 5,586,021 issued to Hugh E. Fargher et al. (hereafter “Fargher”). Applicants respectfully traverse the rejections under 35 U.S.C. § 103(a), to the extent those rejections might be applied to the claims as amended.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Sudou relates to an equipment production management system. Chapman relates to a memory structure and related method for collecting and maintaining data for inter-related process flows. As recognized in the Office Action, Sudou does not disclose the real-time communication of information relating to the operating status of equipment in a manufacturing facility. Chapman does not disclose or suggest such functionality either.

The Office Action cites column 60, lines 50 – 65 of Chapman with regard to real-time communication of equipment status information. The cited portion of Chapman, however, relates to the real-time management of data that represents an allocation of resources. Chapman says nothing about monitoring and communicating operational status of equipment in a manufacturing facility. Consequently, even if Sudou and Chapman were to be combined, the combination would not disclose or suggest all of the features recited in independent Claim 1.

Fargher relates to a method and system for production planning. Applicants have found nothing in Fargher to disclose or suggest the real-time communication of information relating to the operating status of equipment in a manufacturing facility. Consequently, even if Sudou and Fargher were to be combined, the combination would not disclose or suggest all of the features recited in independent Claim 1.

Independent Claims 8 and 15 include features that are the same as or similar to the applicable feature or features of Claim 1. Accordingly, the cited art does not render Claims 8 and 15 obvious. The remaining claims depend ultimately from Claim 1, Claim 8 or Claim 15, and therefore necessarily include the features of the respective parent claims. All pending claims, therefore, are considered to be allowable over the cited art.

Information Disclosure Statements

Applicants appreciate the Examiner's consideration of the Information Disclosure Statements filed September 19, 2002, January 21, 2003 and January 31, 2003.

Applicants would like to bring to the Examiner's attention that an additional Information Disclosure Statement was filed for consideration on July 25, 2002. Applicants believe that the above-identified Information Disclosure Statement and PTO Form 1449 were filed and submitted in compliance with 37 C.F.R. §§1.97 and 1.98. Applicants attach a copy of the Information Disclosure Statement and PTO Form 1449 for consideration for the

Examiner's convenience and a copy of the postcard receipt evidencing receipt by the Patent Office is also attached. Applicants respectfully request consideration of the Information Disclosure Statements and PTO Form 1449 and the Examiner initial the PTO Form 1449 to indicate that the references were properly considered during examination of this application.

In addition, Applicants submit herewith a new Information Disclosure Statement and PTO-1449, together with the required fee of \$180.00, for consideration by the Examiner.

CONCLUSION

The application has been reviewed in light of the Office Action mailed February 28, 2003. Applicants appreciate the Examiner's careful review of the application. Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of the claims as amended.

Applicants believe no fee is due for this response other than the \$180.00 enclosed for the IDS. However, if any additional fees are due, the Commissioner is hereby authorized to charge any necessary fees or credit any overpayment to Deposit Account No. 02-0383 of Baker Botts L.L.P.

Respectfully submitted,
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5/28/03

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